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March 28, 1997

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Federal Communications Commission  
Office of Secretary

William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

Re: *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service — GN Docket No. 96-228; Notice of Written Ex Parte Communication*

Dear Mr. Caton:

Enclosed for inclusion in the record of the reference proceeding are two copies of a written *ex parte* communication delivered today to Charles J. Iseman and the Commission staff members shown thereon as receiving copies.

Should you have any questions regarding this filing, please contact the undersigned.

Respectfully submitted,



Paul J. Sinderbrand

Counsel for the Wireless Cable  
Association International, Inc.

Enclosure

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*VIA HAND DELIVERY*

Charles J. Iseman  
Chief, Spectrum Policy Branch  
Office of Engineering and Technology  
Federal Communications Commission  
2000 M Street, N.W., Room 480  
Washington, D.C. 20554

Re: *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service — GN Docket No. 96-228; Ex Parte Communication*

Dear Mr. Iseman:

I am writing on behalf of the Wireless Cable Association International, Inc. ("WCA") in furtherance of the discussion we had late yesterday regarding the duration of any rules requiring a Wireless Communications Service ("WCS") licensee that chooses to operate with power levels in excess of a reasonable minimum safe harbor to bear all costs associated with protecting Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") reception.

At the present time, wireless cable operators, ITFS licensees and manufacturers all maintain inventories of downconverters<sup>1/</sup> that were designed and manufactured in accordance with the Commission's rules, but would nonetheless suffer interference from high-power WCS operations.<sup>2/</sup> It is WCA's understanding that the Commission, consistent with its past precedent,<sup>3/</sup>

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<sup>1/</sup>For purposes of this letter, I will employ the term "downconverter" to refer to both stand-alone downconverters and integrated antenna/downconverter units.

<sup>2/</sup>Although WCA has been unable to ascertain precisely the size of those inventories, WCA believes based on the preliminary information available to it that several hundred thousand downconverters could be affected.

<sup>3/</sup>See, e.g. *Amendment of Part 90 of the Commission's Rules to Restrict the Use of Radio Transmitters with External Frequency Controls*, 2 FCC Rcd 7221, 7223

is considering the adoption of rules that will provide protection to such downconverters (including, we hope, downconverters manufactured over the next 3-9 months while new downconverter designs are developed and implemented) from WCS interference. WCA applauds the Commission's desire to assure that those who manufactured or purchased the current generation of downconverters are not unduly harmed by the inauguration of high power WCS service.

WCA is concerned, however, that the Commission's efforts in this regard might be undercut if the Commission adopts an unduly brief transition period. We understand that the Commission is contemplating rules that would deny any protection from WCS interference after the passage of as little as three years. Such an approach would effectively obsolete the existing inventory of manufacturers and impose undue financial burdens on operators and licensees who have already acquired MDS/ITFS downconverters. Historically, when the Commission has modified its rules but afforded manufacturers an opportunity to market non-compliant devices, the Commission has not imposed any restrictions on the subsequent use of such devices.<sup>4/</sup> There is no reason to depart from that approach here.

As WCA discussed in its Petition, the entire installed base of downconverters is not expected to be replaced any time soon. Downconverters have proven to be extremely reliable in the field and incidents of failure are rare. As a general proposition, downconverters are

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(1987)[permitting manufacturing of equipment that did not comply with new rule for an additional 60 days, permitting marketing of such equipment for an additional year thereafter, and imposing no restriction on the subsequent use of such equipment]; *Extension of the cut-off date for sale of low power 27 MHz walkie-talkies certificated under Part 15 of FCC Rules*, 67 F.C.C.2d 1405 (1978)[affording manufacturers one year to manufacture non-compliant devices, and over two years thereafter to market such devices without any restriction on future use of devices]; *Petition to temporarily waive the CB receiver chassis radiation requirement and Petition to give expedited consideration to an application for CB equipment authorization filed after November 1, 1976*, 61 F.C.C.2d 752, 756 (1976)[FCC permits the sale and subsequent unrestricted use of certain CB radios in inventory at the time of new rule changes that did not comply with new rules]; *Amendment of Part 15 of the Commission's Rules to Provide for the Operation of Radio Door Controls*, 30 F.C.C.2d 584, 586 (1971)[affording manufacturers of remote door controls additional time to sell inventory of non-complying equipment, without imposition of any restriction on the use of that equipment].

<sup>4/</sup>See *id.*

anticipated to have useful lives of ten years, at a minimum. If the existing downconverters in inventory will not be protected for their anticipated useful life, they will be extremely difficult to sell at anything but distress prices. Similarly, if wireless cable system operators and distance learning systems are required to replace their existing downconverters prematurely because of WCS interference, they will suffer significant financial hardship.

There is ample precedent for the Commission to protect downconverters for their entire useful life. When the Commission adopted ITFS interference protection rules in the mid-1980s, it provide special protection for ITFS receive sites constructed prior to May 26, 1983 in recognition of the inferior quality of their downconverters. ITFS facilities are generally provided with 0 dB desired to undesired adjacent-channel interference protection ratio at each registered receive site. However, receive sites built before May 26, 1983 are provided with an additional 10 dB protection.<sup>5/</sup> Those older ITFS receive sites are entitled to the additional protection until such time as the licensee voluntarily replaces the grandfathered equipment or an applicant for new or modified facilities in the vicinity offers to upgrade the grandfathered equipment.<sup>6/</sup> Just last summer, the Commission confirmed that those pre-May 26, 1983 receive sites still are entitled to the additional protection.<sup>7/</sup>

A similar approach should govern here — WCS licensees should be required to replace protected downconverters throughout their useful life, not just for some short period of time. In the alternative, WCA would not oppose the establishment of a ten year period commencing upon the adoption of new rules during which wireless cable operators and educators would be protected from interference while they phase out their use of the current generation of downconverters and install replacements capable of withstanding high power WCS operations. Either approach would assure that manufacturers have an opportunity to sell their existing inventory of downconverters, and that operators and educators have an incentive to acquire those downconverters and employ their existing inventory, all without the undue financial hardship

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<sup>5/</sup>*See Amendment of Parts 21, 74 and 94 of the Commission Rules and Regulations with regard to the technical requirements applicable to the Multipoint Distribution Service, the Instructional Television Fixed Service and the Private Operational-Fixed Microwave Service (OFS)*, 98 F.C.C.2d 68, 82-83 (1984).

<sup>6/</sup>*See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 5 FCC Rcd 6410, 6414 (1990).


<sup>7/</sup>*Request For Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, DA 95-1854, at 13 n. 41 (rel. July 10, 1996).

Charles J. Iseman  
March 28, 1997  
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that would otherwise stem from premature obsolescence.

Should you have any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

  
Paul J. Sinderbrand

Counsel for the Wireless Cable  
Association International, Inc.

cc: Rudy Baca  
Jonathan Cohen  
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Julius Genachowski  
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